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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1288

ALFRED DUNHILL OF LONDON, INC.,

Petitioner,

vs.

THE REPUBLIC OF CUBA and DANIEL SOLANO PINERA,
as Interventor,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONER

VICTOR S. FRIEDMAN
Attorney for Alfred Dunhill
of London, Inc., Petitioner
120 Broadway
New York, New York 10005

LESLIE A. BLAU
of Counsel

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This Supplemental Brief is submitted in response to an order of this Court entered on June 16, 1975, restoring the case to the calendar for reargument and directing the parties to brief the question of whether this Court's holding in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964) should be reconsidered.

Statement of Facts

A summary of the case appears in greater detail at pages 2-5 of Petitioner's Main Brief. For the purposes of the question briefed herein, certain salient facts will be recounted.

This litigation had its genesis in September, 1960, when the Republic of Cuba nationalized or "intervened" several Cuban manufacturers of cigars. For long prior to the intervention Dunhill and other importers had purchased cigars from those manufacturers, and for some months thereafter, the importers continued those purchases. Also during that immediate post-intervention period, the importers continued to pay for cigars which had been shipped prior to the intervention, but only to a minimal extent for post-intervention shipments. The owners fled Cuba, some coming to the United States.

In early 1961 the owners instituted nine actions in the Southern District of New York, including four against Dunhill. By these actions, the owners sought to obtain payment for all cigars which the importers had received, both before and after intervention, as well as to assert certain trademark claims. Shortly thereafter, the interventors sued the owners' counsel, seeking the right to prosecute those same claims. Since the importers were essentially in the position of stakeholders, the District Court stayed the actions against them and proceeded to resolve the fundamental disputes between the owners and the interventors.

Insofar as relevant here, the District Court, in a decision affirmed per curiam by the Second Circuit, held that the interventors were entitled to sue for the post-intervention shipments. *Palicio* v. *Brush & Bloch,* 256 F.Supp. 481 (S.D.N.Y. 1966), *aff'd per curiam,* 375 F.2d 1011 (2d Cir.), *cert. denied,* 389 U.S. 830 (1967). The Court held that, as to Cuban assets, the nationalization decree of 1960 could not be challenged in our courts under the act of state rationale of *Sabbatino.* At this time, the interventors stipulated that the owners were entiled to recover

for pre-intervention shipments, the assumption by both the owners and interventors being that those amounts were insignificant. J.App. 43a.

After the rulings in *Palicio,* the interventors were allowed to intervene, in the procedural sense, as plaintiffs in the nine actions against the importers. These actions were all consolidated for trial and were tried together in 1969.

During the course of trial preparation and at the trial itself, it developed that as of the date of intervention there was unpaid some $477,000 for pre-intervention shipments, hardly the insignificant sum assumed by the parties in *Palicio.* It further developed that the importers had paid those sums after intervention in accordance with their usual practice. Critically, it also developed that, although the interventors refused to admit receiving those funds, they, in fact, had received them. J.App., 20a-22a and 46a. In the case of Dunhill those payments amounted to some $148,000, or about $55,000 in excess of what Dunhill still owed Cuba for the post-intervention shipments. In the case of the importers as a group, however, far more was owed to the interventors for the post-intervention shipments (approximately $200,000) than had been paid to the interventors for the pre-intervention shipments. J.App. 44a-45a.

Judge Bryan ruled that the owners were entitled to payment for the pre-intervention shipments. He also ruled that the interventors wrongfully had received those payments and were liable, under an unjust enrichment theory, for their return to the importers. In his initial decision, he allowed each of the importers to set off the amount of those payments against the amounts due for the post-intervention shipments. He specifically ruled the act of

state doctrine inapplicable to the payments received by Cuba, stating, in part:

> "Here, all that occurred was a statement by counsel for the interventors, during trial, that the Cuban government and the interventors denied liability and had refused to make repayment. This statement was made after the interventors had invoked the jurisdiction of this Ccurt in order to pursue their claims against the importers for post-intervention shipments. It is hard to conceive how, if such a statement can be elevated to the status of an act of state, *any* refusal by *any* state to honor *any* obligation at *any* time could be considered anything else." J.App. 55a (emphasis in original).

It was apparent, of course, that the "set-off" procedure described by Judge Bryan in his initial opinion did not take account of Dunhill's situation. Accordingly, Dunhill moved for an affirmative judgment against the interventors. The interventors expressed no opposition and the motion was granted. J.App. 74a-75a. The effect of Judge Bryan's ruling was to require Dunhill to pay, with interest, for all of the cigars it had received. No money would flow to Dunhill, since any affirmative recovery against the interventors was owed to the owners.

The Second Circuit affirmed Judge Bryan's decision in all respects except one. It reversed the affirmative judgment in favor of Dunhill on the ground of the act of state doctrine. It found the act of state in Cuba's "failure to honor the importers' demand" for return of the payments ("confirmed by the Cuban government's counsel at trial"). J.App. 25a. The effect of the Court of Appeals ruling was to force Dunhill to pay twice for the same cigars —once to the owners and once to the interventors, both with interest.

Summary of Argument

The issues raised by this Court for reargument need only be decided if this Court holds that the remarks of counsel for the Republic of Cuba constituted competent evidence of an act of state unrelated to the original expropriation of the cigar factories. If the Court so holds, we submit that when a foreign sovereign repudiates its obligations arising from a course of commercial dealings, the policy considerations stated in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964), do not support application of the act of state doctrine and compelling reasons exist for full adjudication of the controversy. This is particularly so when the act is in clear violation of international law as supported by a consensus of nations. Since the act of Cuba in this case arose out of its commercial dealings with Dunhill and constitutes a discriminatory taking without compensation, the act of state doctrine should not be applied in derogation of Dunhill's rights.

I.

Reconsideration of *Sabbatino* is unnecessary to the decision in this case unless this Court holds, contrary to the position of all parties, that the remarks of Cuba's counsel proved a separate and independent act of state.

For the reasons set forth at length in our principal brief, we submit that there is no support in the record for the existence of any act of state by the Republic of Cuba with respect to Dunhill. *See* Pet. Br. at 8-12. It remains Dunhill's position that remarks of counsel do not constitute an act of state, which must involve an affirmative act of a foreign sovereign within its territory, proved by competent evidence in our courts.

The Court of Appeals below held, without benefit of either briefs or argument on the subject, that the remarks of counsel "confirmed" a repudiation by Cuba of its ob-

ligation to return to Dunhill the money Dunhill paid Cuba by mistake. Briefing the subject for the first time, the interventors took the position in this Court that the original expropriation decree constituted the act of state upon which they rely. Expressly refusing to argue that counsel's remarks could prove an act of state (Resp. Br., at 12), they argued instead that the decree was the act of state which operated to seize any monies which subsequently were transferred to Cuba by the importers in satisfaction of accounts receivable.* Thus, Cuba states:

> "[O]n the record here there is ample showing of an act of state by Cuba. The interventor, an agent of the state, accepted and retained the petitioner's payments for pre-intervention shipments. Moreover, *such money was accepted on a claim of right, namely that the decree of September 15, 1960 nationalized accounts receivable.* Furthermore, the interventor has refused to repay the monies accepted by it, and still claims that he is entitled to that money *by virtue of the nationalization decree.*" Resp. Br. at 17-18 (footnotes omitted; emphasis added).

Thus both Dunhill and Cuba are in agreement that the Court below erred insofar as it held that counsel's remarks proved a separate and independent act of state. If this Court accepts either the position of Dunhill or that of Cuba, it need not reach the issue of whether *Sabbatino* should be reconsidered.

If this Court accepts Dunhill's position that the remarks of counsel do not prove a separate act of state, obviously

* The courts below held that the owners were entitled to the accounts receivable under the authority of *Republic of Iraq* v. *First National City Bank*, 353 F.2d 47 (2d Cir. 1965), which held that an expropriation decree could not be given extraterritorial effect and denied the power of the Republic of Iraq to seize a United States bank account belonging to its former king. That case, following *Harris* v. *Balk*, 198 U.S. 215 (1905), also held that debts (such as accounts receivable) have a situs with the debtor.

such a holding will not involve a reconsideration of *Sabbatino*.

Similarly, if this Court accepts Cuba's position, it need not reexamine *Sabbatino*. If the Court should agree with Cuba that the 1960 decree was effective to nationalize the accounts receivable due the owners, Cuba will have been held to have taken assets belonging to the owners—former Cuban nationals.*

Such an expropriation would not be in violation of international law. As Mr. Justice White (dissenting in *Sabbatino*) stated: "violations of international law . . . were not presented [in cases where] the parties or predecessors in title were nationals of the acting state. . . ." 376 U.S. at 442. *See also* Restatement, Second, Foreign Relations Law of the United States, § 171(a) and Comment b to § 165;** *United States* v. *Belmont*, 301 U.S. 324, 332 (1937); Zander, *The Act of State Doctrine*, 53 AM.J.INT'L LAW 826, 833 (1959). Thus, since no violation of international law would be presented, reconsideration of *Sabbatino* would not affect the outcome of this case.

* Under this view, the holdings below would be radically changed and the respective rights of the owners and Cuba materially affected. If all accounts receivable are held to have been nationalized, the owners' claim against Dunhill and the other importers would be extinguished and Cuba would be entitled to judgment for those amounts. If, on the other hand, the 1960 decree is held effective only as to monies which found their way into Cuba, this would mean that the owners' judgments against the importers would be reduced and Cuba's judgments increased by such amounts.

** An exception may exist in the case of a crime against humanity committed by the sovereign and condemned by an international convention. *See* 376 U.S. at 457, n. 18. Comment b to § 165 of the Restatement declines to take a position on this question, stating: "It has recently been suggested that states are bound by international law to respect certain basic human rights of all persons, whether aliens or nationals. . . . The question whether international law imposes any obligations with respect to the treatment by a state of its own nationals is beyond the scope of the Restatement. . . ."

II.

The acts of the Republic of Cuba directed at Dunhill should not preclude the courts from fully adjudicating Dunhill's claims; insofar as *Sabbatino* holds otherwise, it should be reconsidered.

If the Court determines that the remarks of Cuba's counsel were sufficient proof of a separate and independent act of state, this Court must further determine whether that act precludes full adjudication of Dunhill's claims. We respectfully submit that *Sabbatino* does not preclude such adjudication; if it does, it should be reconsidered.

In *Sabbatino,* this Court stated that the "vitality" of the act of state doctrine "depends on its capacity to reflect the proper distribution of functions between the judicial and political branches" of government. 376 U.S. at 427-28. The Court stressed that the proper distribution of those functions must be determined by weighing a "balance of relevant considerations." *Id.* at 428. Only after careful examination of those factors did the Court reach its decision that executive redress rather than adjudication was the proper means of resolving the controversy. We submit that in the case at bar the relevant considerations balance heavily in favor of adjudication and against application of the act of state doctrine.

In the absence of compelling policy considerations to the contrary, the Court should apply international law which "is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." *The Paquete Havana,* 175 U.S. 677, 700 (1900). Of course, we recognize that in declining to decide issues of international law in *Sabbatino,* the Court relied heavily on the sensitivities of

the executive branch in the area of foreign relations. Yet neither the executive nor the legislative branch has fully shared this concern. The Hickenlooper Amendment (22 U.S.C. § 2370(e)(2)) was enacted specifically to overturn *Sabbatino's* presumption of non-justiciability of violations of international law by foreign sovereigns. *1964 U.S. Code Cong. & Admin. News* 3890 (88th Cong., 2d Sess.). Moreover, the State Department, to our knowledge, has never proposed legislation to repeal the Hickenlooper Amendment. And in the only post-*Sabbatino* case in which the State Department has expressed its views, it argued against application of the act of state doctrine in that "or like cases." *First National City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759, 764 (1972); *see also Banco Nacional de Cuba* v. *Farr,* 383 F.2d 166, 172 n. 7 (2d Cir. 1967), *cert. denied,* 390 U.S. 956 (1968).

Although the Judiciary is not ordinarily bound by the concerns of the Executive and the Congress, the absence of such concern, we submit, is an important consideration in determining whether the courts should abstain, out of deference to the other branches, from their traditional role of adjudicating controversies between litigants. Where, as here, the act of the foreign sovereign arose out of its commercial dealings and is in clear violation of international law, there are no considerations which argue for the application of the act of state doctrine and compelling reasons for full adjudication of the controversy before the Court.

A. The act of state doctrine should not be available to a sovereign as a means of repudiating its commercial obligations.

Unlike the nationalized company in *Sabbatino,* Dunhill was not an investor of capital in Cuba. It was an importer, a purchaser of tobacco from Cuban businesses and later

from the Republic of Cuba. In consideration for its purchases, Dunhill, as required by commercial law, made payments for goods received. In the course of these transactions, some payments found their way to the wrong party—the Republic of Cuba. Rather than submit to an adjudication of the merits of Dunhill's claim for return of the money, Cuba invokes the act of state doctrine and, in its capacity as a sovereign, claims to have repudiated its debt to Dunhill.

If Cuba can take such a step with impunity in the course of ordinary commercial dealings, it is difficult to see, as Judge Bryan observed below (*see* p. 4 *supra*), why *any* refusal by *any* state to honor its obligations in the course of commercial transactions would not have to be treated as an act of state. The impact on international trade would be disastrous, and would run counter to the trend whereby sovereigns dealing in commercial transactions are increasingly treated as subject to the rule of law.

The trend in the field of sovereign immunity is to render a sovereign party to a commercial transaction amenable to suit in the United States and to enable litigants to execute against it. As noted in our principal brief (Pet. Br., at 18-20), this "restrictive theory" of sovereign immunity has been well-established since at least 1952, and proposals have been made to codify it into law. If Cuba can invoke the act of state doctrine in this case, any such limitation on sovereign immunity would be meaningless.

If the courts refuse to adjudicate Dunhill's claims on the ground that they cannot question Cuba's repudiation of its obligations, international trade between United States businesses and foreign governments would almost surely be adversely affected. The courts of the United States would effectively be closed as a means of redress for

any breach of an obligation committed by the foreign sovereign. Yet our courts would be open to the foreign sovereign to enforce the obligations of the United States businesses arising out of the same commercial transaction. Such one-sided enforcement of commercial obligations can hardly be expected to foster the increasingly important volume of trade being conducted between such businesses and foreign governments. *See* INTERNATIONAL ECONOMIC REPORT OF THE PRESIDENT, p. 56 (1975). The impact on international trade was a factor considered by the Court in *Sabbatino* as calling for application of the act of state doctrine. The impact on international trade when the sovereign is engaged in a commercial course of dealings calls for precisely the opposite result.

Nor can any nation engaged in international commercial dealings legitimately object to being held responsible for complying with generally recognized rules which govern all parties in international trade. The need for stability in international trade has prompted all countries, regardless of political orientation, to adopt uniform rules applicable to international transactions. Thus, Professor Jeraz Rajski of Poland explains:

> "The striking similarity evidenced in all national legal systems in this respect [international trade] explains itself through the essence of the subject-matter of their regulation: international commerce. The international character of the regulated subject-matter imposes a certain necessary degree of similarity in the given national legal solutions. The goal of these provisions is to safeguard international economic intercourse, which can be achieved by establishing a stable legal protection of the interests of those involved in foreign commercial transac-

> tions. Because in those cases a foreign element is always present, they can come under the laws and jurisdictions of different states. As a consequence of this, the existence of fundamental differences in the various municipal laws would constitute a danger of insecurity and uncertainty with regard to the extent of legal protection. This would result in making the law more an obstacle than an element of encouragement for the development of international economic intercourse." Rajski, *The Law of International Trade of Some European Socialist Countries and East-West Trade Relations,* 1967 WASH. U.L.Q. 125, 137.

Professor Rajski's views stem in part from an international conference held in 1962 in which "the most eminent experts on international trade law from both socialist and Western countries were represented." *Id.* at 129. Professor Schmitthoff of England, who delivered the general report at the conference, points out that the law which is emerging is not simply a specification by parties of a governing state law or a similar choice-of-law clause, but a bona fide international body of law:

> "One of the most remarkable developments on the contemporary legal scene is the emergence of an autonomous law of international trade which, by tolerance of the national sovereigns, is breaking through the barriers of national legal systems and assuming universal character. . . .
>
> "We are beginning to rediscover the international character of commercial law and the circle now completes itself: the general trend of commercial law everywhere is to move away from the restrictions of national law to a universal, international conception of the law of international trade." Schmitthof, *The Unification or Harmonization of Law by Means of Standard Contracts and General Conditions,* 17 INT'L AND COMP. L. Q. 551, 563-64 (1968) (footnotes omitted).

See also Lowenfeld, INTERNATIONAL PRIVATE TRADE, pp. 1-2 (Matthew Bender 1975); Gal, *The Commercial Law of Nations and the Law of International Trade,* 6 CORN. INT'L L. J. 55, 64 (1972); Trommer, *The Law of Foreign Trade in the Legal Systems of the Countries of Planned Economy,* in THE SOURCES OF THE LAW OF INTERNATIONAL TRADE 41 (Schmitthoff ed. 1964) (hereinafter "SCHMITTHOFF"); Knapp, *The Function, Organization and Activities of Foreign Trade Corporations in the European Socialist Countries,* SCHMITTHOFF 52; Goldstajn, *International Conventions and Standard Contracts as Means of Escaping from the Application of Municipal Law,* SCHMITTHOFF 103; Ionasco, *The Limits of Party Autonomy,* SCHMITTHOFF 167; and Schmitthoff, *Introduction,* SCHMITTHOFF at ix.

It hardly serves the purpose of international commercial stability to hold that an act of state repudiating commercial obligations precludes adjudication, and that by the talismanic invocation of the act of state doctrine a sovereign dealing as a merchant can defeat the system of law constructed to govern all parties who engage in international commercial transactions. On the contrary, recognition by the courts of such arbitrary action by a sovereign would be antithetical to the goal of expanded world trade, a prime concern of this country:

> "There is wide international recognition that national economies have become so interrelated that arbitrary actions on either the import or export side can adversely affect the economic activity in other countries. Such actions can undermine the

foundation of the international trading system and put in jeopardy the benefits of expanded and freer world trade." INTERNATIONAL ECONOMIC REPORT OF THE PRESIDENT, pp. 29-30 (1975).

It is difficult, therefore, to see how our executive branch could be embarassed by application of rules governing international trade to foreign sovereigns acting in the commercial arena. The concern of *Sabbatino* with such embarassment in possibly sensitive areas of international law (376 U.S. at 433) simply does not apply to a sovereign operating in the market place as a private trader. Indeed, we perceive no reason why a sovereign acting as a party to a commercial transaction should fare differently in our courts under the act of state doctrine than under the doctrine of sovereign immunity.* In the highly unlikely event that the Executive expressed its view that adjudication of such a dispute would be injurious to the foreign policy interests of the United States, that view could be considered as a factor to be weighed by the courts in determining their role; but, absent such expression, the clear presumption in this context should be in favor of adjudication.

Finally, we note that although the equities of the parties have not been viewed as a critical factor in act of state

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* The rationale for the State Department's restrictive theory of sovereign immunity argues equally for the inapplicability of the act of state doctrine in commercial dealings:

> "[T]he Department feels that the widespread and increasing practice on the part of governments engaging in commercial activities makes necessary a practice which will enable persons doing business with them to have their rights determined in courts." Letter from Jack B. Tate to Philip B. Perlman, May 19, 1952, 26 DEP'T STATE BULL. 984 (1952).

Clearly, where a foreign sovereign has breached its commercial obligations (*see, e.g.,* N.Y. Times, May 19, 1975, at 43, col. 5), the rights of the parties in United States courts should not depend on whether the sovereign pleads that it has repudiated its obligations as an act of state or whether it pleads that it has not consented to be sued.

cases, equitable considerations make wholly inappropriate application of the act of state doctrine in cases where the sovereign is a party to a commercial transaction. Because the sovereign's act is directed at a purchaser or seller of goods and not an investor, there is no question of claims by the sovereign for any alleged exploitation. Nor must the Court balance the rights of the original owners of expropriated property against those of innocent third party purchasers. *Compare Sabbatino, supra,* 376 U.S. at 435. In the case at bar, of course, the effect of applying the act of state doctrine is to ignore the legal and equitable principles which both courts below held squarely should govern the rights of the parties, giving Cuba a windfall and creating a double liability for Dunhill.

B. If an act of state is in violation of international law supported by a consensus of nations, the act of state doctrine should not be available to a sovereign as a means of repudiating its commercial obligations.

When a sovereign repudiates its obligations arising out of commercial dealings, the courts should adjudicate the claims of the parties to the transaction. *See* Point A *supra.* In the case at bar, there is an additional reason for the Court not to apply the act of state doctrine. Cuba's act, a discriminatory taking without compensation, was in violation of international law supported by a consensus of nations. The existence of such a consensus (even in a non-commercial context) lessens the possibility that the courts will embarass the executive branch. The courts, furthermore, can not be accused of rendering a biased decision when all agree upon the applicable law.

In Point A we demonstrated why a sovereign should not be permitted under the act of state doctrine to repudiate its obligations arising in the course of international trade. While we do not concede the point, we recognize

that sovereigns may claim that their acts, although affecting their commercial obligations, can be justified as having a higher public purpose. However, where such acts are in flagrant violation of international law, no justification exists for special treatment of the sovereign by virtue of that status. A sovereign engaged in international commerce should not be allowed to plead its sovereign status as justification for acts committed in violation of principles which are accepted as governing the behavior of nations.

In *Sabbatino,* the Court noted the importance of a consensus of international law in determining whether the act of state doctrine should apply. The Court reasoned that "the greater degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice." 346 U.S. at 428. *See also id.* at 430, n. 34.

It is unclear from *Sabbatino* whether a finding that a consensus supports a particular aspect of international law would suffice to invalidate an act of state in violation thereof. It has been suggested that if the *Sabbatino* Court had found the act of Cuba to be in flagrant disregard of such a consensus, it would not have applied the act of state doctrine. *See* F. Mann, *The Legal Consequences of Sabbatino*, 51 Va. L. Rev. 604, 607-08 (1965). Under this analysis, *Sabbatino* would support a full adjudication on the merits in the case at bar, where there has been a discriminatory act of state without compensation, in clear violation of international law. *See infra*, pp. 17-18.

The other view of *Sabbatino* is that it held that the act of state doctrine should be applied even in the face of a clear violation of international law. *See Sabbatino,* 376 U.S. at 456 (White, J. dissenting). Even if *Sabbatino* so held, we believe the Court made clear that a violation of international law recognized by a consensus of nations is a factor weighing in favor of full adjudication. *See* p. 16, *supra.*

Thus, even the broader reading of *Sabbatino* is wholly consistent with our position that a flagrant violation of international law is a factor to be considered. For the reasons set forth in this Point and Point A, *supra,* we respectfully submit that in the context of a sovereign's commercial transactions, its clear violation of international law is sufficient reason to compel adjudication on the merits. If *Sabbatino* holds otherwise it should be reconsidered.

We need hardly belabor the point that Cuba's actions in respect of Dunhill constitute a clear violation of international law. This is not a case where conflicting ideological systems may reach different conclusions regarding the legitimate purpose of an expropriation or the adequacy or promptness of consideration paid for property seized. *See Sabbatino,* 376 U.S. at 428-30. Here, Cuba's actions, however characterized,* amount to nothing more than a discriminatory taking without any justification or compensation. Such a taking violates international law as recognized by the consensus of nations. R. Falk, *The Complexity*

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* Cuba's action was described by the Court of Appeals both as a repudiation of its obligations and as a failure to honor Dunhill's demand for the return of its money. J. App. 25a. We eschew the opportunity to argue that Cuba's actions did not constitute a "taking of property", the language used by the Court in *Sabbatino* in limiting its express holding. 376 U.S. at 428. The legality of theft, however termed, has never been advocated by any country. *See, e.g.,* F. Mann, *The Legal Consequences of Sabbatino,* 51 Va. L. Rev. 604, 613 (1965).

of Sabbatino, 58 Am. J. Int. L. 935, 944 (1964); F. Mann, *The Legal Consequences of Sabbatino,* 51 Va. L. Rev. 604, 613-614, 617 (1965); *Sabbatino, supra,* 376 U.S. at 465, n. 22 (White, J. dissenting); *Banco Nacional de Cuba* v. *Farr,* 383 F.2d 166, 183 (2d Cir. 1967), *cert. denied,* 390 U.S. 956 (1968).

CONCLUSION

Respondents' attempt to prevent the courts from fully adjudicating this case should be rejected, and the judgment of the Court of Appeals for the Second Circuit reversed to reinstate Petitioner's affirmative judgment.

Respectfully submitted,

Victor S. Friedman
Attorney for Petitioner
120 Broadway
New York, New York 10005

Leslie A. Blau
of Counsel